

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

NEXT Payment Solutions, Inc.,

Plaintiff,

v.

CLEARResult Consulting, Inc.,

Defendant.

Case No. 17 CV 8829

DEFENDANT'S MOTION TO MODIFY SCHEDULING ORDER

Defendant CLEARResult Consulting Inc., by and through its counsel, submits this motion to modify certain pretrial deadlines in the Court's June 11, 2021 Scheduling Order (Dkt. No. 459). After learning that NEXT intended to present an entirely new theory of unjust enrichment at trial—that at best was dismissed as part of this Court's ruling on summary judgment or at worst another attempt to amend the complaint—CLEARResult filed an early motion in limine to exclude NEXT's new theory on September 8, 2021 (Dkt. No. 460).

Accordingly, CLEARResult now moves the Court to (a) set September 22, 2021 as the deadline for NEXT to respond to CLEARResult's September 8 Motion in Limine; (b) extend the deadlines from November 8, 2021 to December 3, 2021 for the parties to file their pretrial order and remaining motions in limine; and (c) extend the deadline from November 22, 2021 to December 17, 2021 for the parties to file responses to the remaining motions in limine.¹

¹ On September 3, 2021, the parties met and conferred regarding the issues addressed in this motion. CLEARResult engaged in a good-faith attempt to resolve the disputes at issue, but the parties were unable to reach an agreement. It is CLEARResult's understanding that NEXT plans to respond to CLEARResult's September 8 Motion in Limine on November 22, 2021 (the date in the

As explained in detail in CLEAResult's September 8 Motion in Limine and accompanying memorandum of law, the narrow set of issues to be tried on January 31, 2022 are whether CLEAResult owes NEXT for certain licenses and other "services" valued at approximately \$500,000.

NEXT, however, announced in the parties' June 5, 2021 Joint Statement (Dkt. No. 458) that it intends to present a new theory at trial: that CLEAResult is liable for common law unjust enrichment for the "misuse" of NEXT's "proprietary" information, which includes unidentified "confidential information" and NEXT's internet "domains." According to NEXT, it is entitled to \$423 million in damages for this sprawling and amorphous "misappropriated proprietary information" theory.

In the interest of judicial efficiency, CLEAResult respectfully requests that the Court take up its September 8 Motion in Limine now—before the Pretrial Order ("PTO") is due—so that the parties (and Court) may appropriately prepare for the January 2022 trial knowing whether NEXT's "misappropriated proprietary information" theory is or is not part of the case. If it is part of the case, the issues that the parties and Court need to address before trial (including in the PTO) are substantial.² If it is not, the pre-trial issues will be modest.

Thus, in the interests of judicial efficiency, efficiency and cost for the parties, and avoidance of prejudice, CLEAResult thus respectfully asks that the Court to enter an order:

Court's Order of June 11, 2021 for responses to motions in limine), and that it will not agree to jointly move the Court for an adjustment of pretrial deadlines to give the Court an opportunity to consider CLEAResult's September 8 Motion in Limine before the PTO is prepared and submitted to the Court.

² Among other things, CLEAResult anticipates extensive motions in limine and numerous disputes about the relevancy of exhibits and testimony that relate solely to NEXT's "misappropriated proprietary information" theory if CLEAResult's September 8 Motion in Limine is not granted.

- a) requiring NEXT to respond to CLEAResult's September 8 Motion in Limine by September 22, 2021;
- b) extending the deadline for the Pretrial Order from November 8, 2021 to December 3, 2021 (to allow sufficient time for the Court to consider the September 8 Motion in Limine before the parties need to prepare and finalize the PTO);
- c) extending the date for motions in limine from November 8, 2021 to December 3, 2021; and
- d) extending the deadline for responses to motions in limine (other than CLEAResult's September 8 Motion in Limine) from November 22, 2021 to December 17, 2021.

Dated this 8th day of September, 2021.

HOLLAND & KNIGHT LLP

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing MOTION TO MODIFY SCHEDULING ORDER to be served on the following person[s]:

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by CM/ECF electronically mailed notice from the Court on the date set forth below.

DATED September 8th, 2021.

s/J. Matthew Donohue
J. Matthew Donohue